APPEAL NO. 021511
FILED AUGUST 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 7, 2002. The hearing officer determined that the parents of the decedent, claimant beneficiaries (herein referred to as the claimants), were not dependent parents of the decedent as defined by Section 408.182(d). The claimants appealed, arguing that evidence established at the CCH that the claimants were dependents as that term is defined in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §132.2 (Rule 132.2) and, therefore, qualify for death benefits. The appeal file did not contain a response from the respondent (carrier).

DECISION

Affirmed.

The requirement for determining whether an individual meets the statutory criteria for dependency is contained in Rule 132.2. Rule 132.2(b) provides, in part, that a benefit which flowed from a deceased employee, at the time of death, on an established basis in at least monthly intervals to the person claiming to be dependent, is presumed to be a regular or recurring economic benefit and that the presumption may be overcome by credible evidence. Rule 132.2(c) provides, in part, that it shall be presumed that an economic benefit, whose value was equal to or greater than 20% of the person's net resources in the period for which the benefit was paid, is an economic benefit which contributed substantially to the person's welfare and livelihood and that this presumption may be overcome by credible evidence. The burden is on the claimant to prove that benefits whose value was less than 20% of the person's net resources contributed significantly to the person's welfare and livelihood.

The issue of a claimant's dependency for purposes of benefits under the 1989 Act is generally a factual matter for the hearing officer's determination. Texas Workers' Compensation Commission Appeal No. 92523, decided November 18, 1992. We note that Rule 132.2(e) states that to enable the Texas Workers' Compensation Commission to accurately identify a claimant's net resources and to establish the existence of the economic benefit claimed, information such as tax returns, financial statements, and check stubs may be used. While written records indicating the amount of the claimant's net income and the amount and frequency of the deceased's contributions is preferable, it is not mandatory, and lack of documentary evidence goes to the weight to be given the testimonial or other written evidence. Texas Workers' Compensation Commission Appeal No. 990953, decided June 16, 1999; Texas Workers' Compensation Commission Appeal No. 961330, decided June 23, 1996.

The hearing officer determined that on May 13, 2000, the benefits that flowed from the decedent to the claimants in fiscal year 2000 were less than 20% of their net

resources, and had not contributed significantly to their welfare and livelihood. There was evidence at the CCH that the decedent asked the claimants to save some of the money he sent to them to allow the decedent to build a house when he returned to Mexico and that the claimants complied with this request.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find the evidence sufficient to support the determination that the claimants are not dependent parents as defined by statute.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

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Michael B. McShane
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

CONCURRING OPINION:

I in no way disagree with the majority decision. The hearing officer's findings of fact were not contrary to the great weight and preponderance of the evidence, and therefore, we cannot reverse his decision. This is so even though, were we fact finders, we might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We have on numerous occasions held that the Appeals Panel should not set aside the decision of a hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel deems most reasonable, even though the record contains evidence of inconsistent inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 93334, decided June 14, 1993; Texas Workers' Compensation Commission Appeal No. 93053, decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992. I would also note that while we are not at liberty to reverse the decision of the hearing officer, a subsequent fact finder is not bound to give the decision, or our affirmance of it, any weight whatsoever.

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Gary L. Kilgore
Appeals Judge